

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A REGULATORY AMENDMENT IDENTIFYING DIESEL EXHAUST AS A TOXIC AIR CONTAMINANT

The Air Resources Board (the “ARB” or “Board”) will conduct a public hearing at the time and place noted below to consider the adoption of a regulatory amendment identifying diesel exhaust as a toxic air contaminant (TAC). In addition to identifying diesel exhaust as a TAC, the proposed regulatory amendment specifies that there is not sufficient available scientific evidence to support the designation of a threshold exposure level below which no significant adverse health effects are anticipated.

DATE: July 30, 1998

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the ARB, which will commence at 9:30 a.m., July 30, 1998, and may continue at 8:30 a.m., July 31, 1998. This item may not be considered until July 31, 1998. Please consult the agenda for the meeting, which will be available at least 10 days before July 30, 1998, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact Kathy Spring at (916) 323-3485, or TDD (916) 324-9531 or (800) 600-8326 for TDD calls from outside the Sacramento area, by July 16, 1998.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Section Affected: section 93000, Title 17, California Code of Regulations.

Background

Assembly Bill 1807 (Stats. 1983, ch. 1047; Health and Safety Code section 39650 et seq., Food and Agriculture Code section 14021 et seq.) sets forth procedures for the identification and control of toxic air contaminants in California. In accordance with those procedures, staff is proposing that the ARB amend section 93000 of Title 17, California Code of Regulations, by adding diesel exhaust to the list of toxic air contaminants with no identified threshold exposure level below which no significant adverse health effects are anticipated.

In accordance with Health and Safety Code sections 39660 and 39661, the Office of Environmental Health Hazard Assessment (OEHHA) staff has prepared an evaluation of the health effects of diesel exhaust and the ARB staff has prepared a report (Report) on diesel exhaust which includes the OEHHA health effects evaluation. The OEHHA staff found that animal data indicates that chronic respiratory disease can result from long-term exposure to diesel exhaust. Based on the animal studies, OEHHA staff recommends a California Reference Exposure Level for noncancer effects of 5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). The OEHHA staff also evaluated over 30 human epidemiological studies which found long-term occupational exposures to diesel exhaust were associated, on average, with a 40 percent increase in the relative risk of lung cancer. Based on the human epidemiological data, OEHHA staff estimated the range of risk of lung cancer in the general population due to diesel exhaust to be 1.3×10^{-4} to $2.4 \times 10^{-3} (\mu\text{g}/\text{m}^3)^{-1}$. The OEHHA staff also found that there was no sufficient scientific evidence to support the identification of an exposure level below which carcinogenic effects would not have some probability of occurring and recommended that diesel exhaust be treated as having no identified threshold.

Other agencies and scientific bodies have studied the health effects of diesel exhaust. In 1988, the National Institute of Occupational Safety and Health first recommended that whole diesel exhaust be regarded as a potential occupational carcinogen; in 1989, the International Agency for Research on Cancer listed diesel exhaust as a “probable” human carcinogen; in 1990, the State of California under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) identified diesel exhaust as a chemical “known to the State to cause cancer” (Title 22, California Code of Regulations, section 12000); and in 1990, and subsequently in 1994 and 1998, the U.S. Environmental Protection Agency proposed to classify diesel exhaust as a probable human carcinogen.

The Scientific Review Panel (SRP), established pursuant to Health and Safety Code section 39670, has reviewed the Report, and has submitted written findings to the ARB, in accordance with Health and Safety Code section 39661. The SRP found the Report on diesel exhaust, as well as the scientific procedures, methods, data, conclusions, and assessments on which the Report is based, to be based upon sound scientific knowledge, methods, and practices, and adopted findings recommending the ARB identify diesel exhaust as a TAC. In approving the range of risk estimated by OEHHA, the SRP concluded that $3 \times 10^{-4} (\mu\text{g}/\text{m}^3)^{-1}$ is a reasonable estimate of unit risk expressed as diesel particulate. The SRP also found that, based on available scientific information, a level of diesel exhaust exposure below which no carcinogenic effects are anticipated cannot be identified.

Description of Proposed Regulatory Action

In accordance with Health and Safety Code section 39662, the ARB staff prepared a proposed regulation identifying diesel exhaust as a TAC with no identified threshold exposure level. No control measures for diesel exhaust are proposed for adoption at this hearing. If diesel exhaust is listed as a TAC, a report on the need for, and appropriate degree of, control measures to reduce

diesel exhaust emissions will be developed in a full, open, public process and in accordance with Health and Safety Code sections 39665 and 39666. A ban on diesel fuel or diesel-fueled engines would not be considered in the needs assessment process. To ensure full opportunity for public consultation and participation in the needs assessment process, ARB staff intends to create a diesel exhaust risk management working group. Invitations to participate would be sent to interested industries, associations, environmental groups, other governmental agencies such as the U.S. EPA and air districts, and other interested parties.

Comparable Federal Regulations

There are no comparable federal regulations.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff, with the participation of the OEHHA staff, has prepared a Staff Report which serves as the Initial Statement of Reasons (ISOR) for this proposal. The Staff Report summarizes the basis for the proposed regulation, the environmental and economic impacts of the proposal, and the findings of the SRP. The technical support documents reviewed by the SRP are referenced in the Staff Report. The technical support documents consist of the SRP approved Executive Summary; Part A, Exposure Assessment, prepared by the ARB staff; Part B, Health Assessment, prepared by the OEHHA staff; and Part C, Public Comment Letters and Staff Responses to Comments, prepared by the ARB and OEHHA staff. Copies of the Staff Report and technical support documents, the full text of the proposed regulation, and any other information on which the proposal is based will be available and may be obtained at the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing. The Staff Report or the ISOR contains the full text of the proposed action. The staff has also compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified immediately below. The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a plain English summary of the regulation is available from the agency contact person named in this notice, and is also contained in the ISOR for this regulatory action.

Further inquiries regarding this matter should be directed to Robert Krieger, Air Pollution Specialist, Substance Evaluation Section, Air Quality Measures Branch, Stationary Source Division, at (916) 445-6318.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determination of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The Board's Executive Officer has determined that the regulation will not create cost or savings,

as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state; costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code; or any other nondiscretionary savings to local agencies.

The ARB finds that the identification of diesel exhaust as a TAC will not require any private person or business, including any small business, to incur any cost in reasonable compliance with the proposed action. If, and when, the need and appropriate degree of control for diesel exhaust are considered by the ARB during the risk management process, all costs of compliance will be described and considered.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Board's Executive Officer has determined that the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, or on directly-affected private persons. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed amendments should have minor or no impacts on the creation or elimination of jobs within the State of California, minor or no impacts on the creation of new businesses and the elimination of existing business within the State of California, and minor or no impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed amendments can be found in the ISOR.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will not affect small business because this action will have no regulatory effect on business.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the ARB, written comments must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or 2020 L Street, 5th Floor, Sacramento, CA 95814, no later than 12:00 noon July 29, 1998, or received by the Clerk of the Board at the hearing.

The ARB requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

Before taking final action on the proposed regulatory action the ARB must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private

persons or businesses than the proposed action.

STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory amendment is proposed under the authority granted in sections 39600, 39601, and 39662 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific, sections 39650, 39660, 39661 and 39662 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5, section 11340 et seq. of the Government Code. Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the modifications are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: